

E-FILED on 4/28/05

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SUSANNE M. PALMER and SHARON
HAMMER, On Behalf of Themselves and Others
Similarly Situated,

Plaintiff,

v.

PAUL R. STASSINOS,

Defendant.

No. C-04-03026 RMW

ORDER DENYING MOTION FOR
RECONSIDERATION OF ORDER
DISMISSING UCL CLAIMS FOR
RESTITUTION AND DISGORGEMENT

[Re Docket No. 40]

SUSANNE M. PALMER, On Behalf of Herself
and Others Similarly Situated,

Plaintiff,

v.

FAR WEST COLLECTION SERVICES, INC.,

Defendant.

No. C-04-03027 RMW

ORDER DENYING MOTION FOR
RECONSIDERATION OF ORDER
DISMISSING UCL CLAIMS FOR
RESTITUTION AND DISGORGEMENT

[Re Docket No. 39]

SUSANNE M. PALMER, On Behalf of Herself
and Others Similarly Situated,

Plaintiff,

v.

I.C. SYSTEM, INC.; and B. BROWN.,

Defendant.

No. C-04-03237 RMW

ORDER DENYING MOTION FOR
RECONSIDERATION OF ORDER
DISMISSING UCL CLAIMS FOR
RESTITUTION AND DISGORGEMENT

[Re Docket No. 33]

1 Plaintiffs moved for reconsideration in related cases *Palmer v. Stassinis*, C-04-3026 RMW; *Palmer*
 2 *v. Far West Collection Services, Inc.*, C-04-3027 RMW; and *Palmer v. I.C. System, Inc.*, C-04-3237
 3 RMW, of the court's December 14, 2004 order dismissing plaintiffs' representative claim for restitution and
 4 disgorgement of profits under California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200.
 5 The Ninth Circuit has espoused three grounds upon which a motion for reconsideration may be based: (1) an
 6 intervening change in controlling law; (2) the availability of new evidence; or, (3) the need to correct clear error
 7 or prevent manifest injustice. *Pyramid Lake Paiute Tribe of Indians v. Hodel*, 882 F.2d 364, 369 n.5 (9th
 8 Cir. 1989).

9 There has been an intervening change in controlling law, however, that change in law does not change
 10 the outcome of the court's analysis with regard to plaintiffs' lack of Article III standing. The passage of
 11 Proposition 64,¹ "amended the UCL by limiting standing to the Attorney General, certain local public
 12 prosecutors, and any person who 'has suffered injury in fact and has lost money or property'", *Frey v. Trans*
 13 *Union Corp.*, 127 Cal. App. 4th 986, 994 (2005) (citing § 17204), thereby eliminating "private attorney
 14 general" standing under the UCL. Because, as set forth in the court's order dismissing the disputed claims,
 15 neither plaintiff paid any of the requested fees, plaintiffs necessarily relied upon private attorney general standing
 16 to assert their representative claim for restitution and disgorgement of profits. It is clear this amendment to the
 17 UCL applies to pending cases. *Id.* at 998; *Benson v. Kwikset Corp.*, 126 Cal. App. 4th 887, 897-98 (2005)
 18 (amendments to the UCL enacted by approval of Proposition 64 applied to pending action on appeal); *Lytwyn*
 19 *v. Fry's Electronics, Inc.*, 126 Cal. App. 4th 1455, 1479-80 (2005) (same); *Bivens v. Corel Corp.*, 126
 20 Cal. App. 4th 1392, 1404 (2005). Having suffered no injury in fact that would entitle them to restitution or
 21 disgorgement under the UCL, plaintiffs cannot by law obtain the relief they seek and thus have no standing.

22
 23 As set forth above, it is even clearer that plaintiffs do not have standing to seek restitution or
 24 disgorgement under the UCL. Further, plaintiffs do not contend there is additional evidence and the
 25
 26
 27

28 ¹ Proposition 64 was approved by the voters on November 2, 2004 and became effective
 on November 3, 2004. *United Investors Life Ins. Co. v. Waddell & Reed, Inc.*, 125 Cal. App. 4th
 1300, 1303 (2005).

1 court does not find reconsideration is required to "correct clear error" or "prevent manifest injustice." Thus,
2 plaintiffs' motion for reconsideration is DENIED.

3
4
5 DATED: 4/27/05

/s/ Ronald M. Whyte

RONALD M. WHYTE

United States District Judge

2 Counsel for Plaintiff(s):

2 Counsel for Plaintiff(s):

3	Ronald Wilcox	ronaldwilcox@post.harvard.edu
	O. Randolph Bragg	rand@horwitzlaw.com
4	Paul Arons	lopa@rockisland.com

5 Counsel for Defendant(s):

6	Andrew Steinheimer	asteinheimer@mpbf.com
	Mark Ellis	mellis@mpbf.com

8 Counsel are responsible for distributing copies of this document to co-counsel that have not registered for e-filing under the court's CM/ECF program.

Dated: 4/28/05

12 **Dated:** 4/28/05 /s/ MAG
Chambers of Judge Whyte